(1)SBCivil Writ Petition No.3563/2006
(Kishan Das Bairagi Vs. Industrial Tribunal-Labour-Court, Udaipur & Ors.)

(2)SBCivil Writ Petition No.3564/2006
(Hari Prasad Chowbisa Vs. Industrial Tribunal-Labour-Court, Udaipur & Ors.)

Date of Order :: 22nd August, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Sanjeet Purohit, for the petitioner(s).

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The Labour Court, Udaipur by its award dated 24.2.2006 while holding that “the office of Tehsildar is not an industry”, as defined under Section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act of 1947”), refused to adjudicate the dispute referred to it by appropriate government vide notification dated 23.8.2001.

The anguish of the petitioner is that while rejecting the writ petition preferred by him giving challenge to his termination from service on the count of availability of an alternative remedy under the Act of 1947, a direction was given by this Court on 13.7.2001 to the appropriate government to refer the dispute concerned to Labour Court for its adjudication and the appropriate government did accordingly but the Labour Court refused to lucidate the dispute on the pretext of lacking jurisdiction. According to the petitioner once the dispute was referred to Labour

Court under the directions of this Court, it should have been adjudicated irrespective of the fold of jurisdiction.

The finding of the Labour Court that the office of Tehsildar is not an industry under the Act of 1947 is also questioned by the petitioner with an argument that functions of the office of Tehsildar are not dominated with sovereign activities but there is a systematic activity with cooperation of the employer and workmen to satisfy human wants and wishes. On basis of contentions raised by counsel for the petitioner the questions formulated to appreciate the issue involved in these petitions for writ are:-

> (1)whether the office of Tehsildar is an industry under the Act of 1947, and
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> (2)whether the Labour Court while denying to examine merits of the dispute referred to it on the count of lacking jurisdiction committed any error, specially in the circumstances that reference of the dispute was made under the directions of the High Court?

To examine first question, the requirement to establish the office of the Tehsildar and its functions are to be looked into. The State of Rajasthan came into existence on 30.3.1949 by merger of various princely states and chief-ships. At that

time most of the agricultural land in state was with Jagirdars without having any security for tenants about their tenure and rent. In various princely states and chief-ships different revenue laws were in force, therefore, with an aim to secure welfare of tiller and to consolidate law relating to land the Rajasthan State Legislature framed the Rajasthan Land Revenue Act, 1955 (hereinafter referred to as "the Act of 1955"). The entire land irrespective of its nature essentially vest with the State. For the purpose of revenue and general administration various Districts, Sub-Divisions, Tehsils and Sub-Tehsils are formed under the provisions of the Act of 1955. The State Government also appointed a Tehsildar in each Tehsil in accordance with the provisions of Section 20 of the Act of 1955. A Tehsildar so appointed is incharge of the land records pertaining to Tehsil concerned. The principal duties of Tehsildar are enumerated under Rule 3 of the Rajasthan Revenue (Duties of Tehsildars and Naib Tehsildars) Rules, 1958 (hereinafter referred to as "the Rules of 1958"), that reads as follows:-

> "3.Principal Duties of Tehsildar.--The principal duties of a Tehsildar are :
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> (1)to collect land revenue, rent Taqavi, cesses and other Government dues and perform other duties connected therewith in accordance with such rules as the Government may from time to time, prescribe;

(2)to keep in safe custody all Government money money and properties which may be placed in his charge;

(3)to supervise by test the land records work in his Tehsil in accordance with the Rajasthan Land Revenue (Land Records) Rules, 1957;

(4)to see that the rules in the Land Records Rules Prescribing the duties of Inspectors, Land Records, or Girdawar Qanungoes, Office Qanungoes and Patwaries are properly carried out;

(5)to act as Sub-Treasury Officer wherever Sub-Treasuries have been established in the Tehsils;

(6)to report to the Sub-Divisional Officer--

(a)all cases of alluvion and dilluvion which have to be reported under the rules;

(b)all cases in which Jagirs or Revenue-Free Grants lape to Government by the death of the incumbent or otherwise;

(c)all cases in which the condition on which a Jagir or Revenue-Free Grant was made has been broken; or the term of such grant has expired;

(d)all seasonal calamities affecting the crops, and any outbreak of epidemic sickness or unusual mortality among either men or cattle;

(e)all cases of serious fluctuations in agricultural prosperity;

(f)all escheats through failure of heirs;

(g)the case of any estate holder who may become disqualified under section 8 of the Rajasthan Court of Wards Act, 1951 (Rajasthan Act XXVIII of 1951);

(7)to keep the Collector and the Sub-divisional Officer in touch with all important social economic or political movement in the Tehsil and to act generally as the executive officer of Government, under the direction of the Collector and the Sub-Divisional Officer, in all matters connected with the land Revenue and general administration of the Tehsil."

The basic duties given under Rule 3 of the Rules of 1958, without any shadow of doubt installs a Tehsildar as a basic unit of the representatives of State or to say as the first ring of administrative bureaucratic chain of the State. Essentially the Tehsildar under the Act of 1955 is a custodian of land records, government money and government property. The Tehsildar also act as a treasury officer of the Government. The Tehsildar is also most sensitive primary unit of governing system as in view of Rule 3 (7) of the Rules of 1958 he is required to keep vigil over the social, economic and political movement in his

area and further to make the higher authorities acquaint to that. As a matter of fact the Tehsildar keep nerve of the society in his hand, that helps State in making identification of social, political and economic needs and diagnosis of ills. The duties and functions of a Tehsildar and his office are not abducted duties of government due to promotion of social development theories but are pertaining to basic issues necessary to sustain governance in every socio political system. These are the primary and inalienable functions of the State, therefore, even by applying the primary and predominate activity test as laid down by Hon'ble Supreme Court in the case of Bangalore Water Supply and Sewerage Board vs. A. Rajappa and others, reported in AIR 1978 SC 548, the functions of the office of Tehsildar are regal and sovereign by nature. The Labour Court, therefore, by award impugned rightly held that the office of the Tehsildar is not an industry as defined under Section 2(j) of the Act of 1947.

Much anguish and disappointment is shown by learned counsel for the petitioner on non adjudication of the dispute by Labour Court in spite of the fact that it was referred by appropriate government to it under the instructions of the High Court by judgment dated 13.9.2001. Learned counsel has emphasised plight of the petitioner who being aggrieved by his termination from service at the first instance

preferred a writ petition before this Court in the year 2001 but was rejected on the count of availability of an alternative remedy under Section 10 of the Act of 1947 with a direction to appropriate government to refer the dispute for its adjudication to the competent forum under the Act of 1947, but the Labour Court in its turn non-suited the employee on the ground of jurisdiction. It is urged by counsel for the petitioner that the Labour Court should have examined the dispute on merits as the jurisdiction to examine validity of the dispute was given to it by the High Court while exercising powers under Article 226 of the Constitution of India.

Despite all sympathy with the petitioner who is making efforts since 2001 to get his grievance redressed, I am of the view that a Labour Court created under the Act of 1947 is required to act within its jurisdiction given by the Act of 1947. A Labour Court is having all authority to deny to answer the reference, if adjudication of the dispute referred is not within its domain. The jurisdiction given to a Labour Court by force of the Act of 1947 cannot be enlarged by the High Court. The jurisdiction of Court is creation of a statute and it cannot feeded beyond the limits prescribed by the law, even by the order of High Court. In present matter no error, therefore, is committed by the Labour Court by refusing to examine merits of the dispute being lacking jurisdiction.

As a result, these petitions for writ deserve dismissal, but looking to the fact that the petitioners are approaching legal fora since 2001 and they were relegated to avail the remedy provided under the Act of 1947 by this Court, it shall be too harsh to left the petitioners remedyless, therefore, while dismissing the writ petitions I consider it appropriate to restore the SBCivil Writ Petition No.2038/2001 at its original number by recalling the order dated 13.7.2001. The registry is directed to list the writ petition referred above (SBCivil Writ Petition No.2038/2001) before this Court for orders at earliest.

(GOVIND MATHUR),J.

kkm/ps.